Supreme Court, U.S.
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No. 00-44

IN THE

Supreme Court of the United States

MOBIL MINING & MINERALS,

Petitioner,

v.

DAVID R. NIXSON AND DIRECTOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS,
U.S. DEPARTMENT OF LABOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT DAVID R. NIXSON

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STATEMENT OF THE CASE

Petitioner's claim

The Petitioner, Mobil Mining & Minerals ("Mobil"), has filed a Petition for Writ of Certiorari alleging a conflict of opinions between the United States Court of Appeals for the Fifth Circuit and the Fourth Circuit involving the determination of the issue of what is a covered "situs" under § 903(a) of the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 903(a). The Respondent, David R. Nixson, would contend that there is not a legal conflict between the Circuits in their interpretation of § 903(a) of the LHWCA; the present case involves facts significantly dissimilar to those reviewed by the Fourth Circuit. The Petitioner seeks to have the Courts base their analysis of the "situs" issue by reviewing the pinpoint site of the accident, instead of the "area" as dictated by the plain language of § 903(a) of the LHWCA. Such a "pinpoint" review of the accident site is contrary to the intent of Congress in amending the LHWCA in 1972, and to the prior holdings of this Honorable Court.

Relevant Background Facts

Mobil Mining & Minerals ("Mobil") operates a fertilizer manufacturing plant in Pasadena, Texas, located directly on the Houston Ship Channel. In order to operate this facility, Mobil imports over 900,000 tons of phosphate rock which is transported to its facility solely in barges which are unloaded at the plant's docking facilities. Nixson testified that without the import of this phosphate rock via maritime commerce, this plant would not be able to function. (Tr., p. 36). Mobil also imports other raw materials including

ammonia and sulfuric acid by barge, as well as by rail and truck. All of these raw materials are intrical in the manufacturing process being conducted by Mobil. Mobil exports three grades of finished fertilizer product by barge, rail and truck (Pet. App. 4a, 20a), also exports sulfuric acid (Tr., p. 43). The Mobil yearly (Cx. 23 – App. B) and ten year accounting of shipments (Cx. 24 – App. B) illustrates the volume of maritime imports/ exports.

Mr. Nixson was an A operator who performed various marine associated jobs on Mobil's dock facilities, such as: operating the marine loader (fertilizer spreader), operating the buhler (phosphate rock discharge), operating the overhead crane in the warehouse exporting fertilizer by barge, unloading ammonia barges, unloading acid barges, and loading thio (liquid fertilizer) barges. (Pet. App. 13a).

Nixson testified that although he would be assigned a specific function on a daily basis, there had been numerous occasions when he had been called off an assigned job during the normal course of an 8-hour shift to perform work directly on the waterfront. This included relieving other employees for lunch breaks and restroom breaks, or in the event of an emergency, such as the arrival of an unexpected barge, which happened frequently. (Tr., p. 90; Pet. App. 14a).

Nixson identified Mobil's facility from an aerial photograph (Cx. 7 – App. A) and blueprint map (Cx. 11). The 900,000 tons of phosphate rock unloaded yearly is performed at the phosphate rock unloading dock, where it is unloaded by a machine called the "buhler"; the east dock is where sulfuric acid and thio barges are loaded and unloaded; the west dock is where finished fertilizer is loaded into barges or vessels. The waterfront facility also contains an ammonia unloading dock where ammonia barges are unloaded. (Pet. App. 14a).

Mr. Nixson described other facilities along the waterfront which include the west storage area (building 10) where dry fertilizer is stored, and the fertilizer storage area (building 9) where additional dry fertilizer is stored for loading into barges and ships. In the fertilizer storage (building 9) the Employer maintains overhead cranes which are used for the loading of vessels through a conveyer system that connects building 9 to the loading dock area. The conveyer system deposits the fertilizer product into the barges via a marine loader apparatus. Both the west storage and fertilizer storage areas are fronted on each side by railroad tracks; one set of railroad tracks is located between the dock area and the front portion of the storage buildings, the second set of tracks run behind the storage area. (Pet. App. 14a).

The phosphate rock is taken out of barges by the buhler and placed onto a series of conveyers which transports the phosphate rock into silos for storage and a rock storage facility, identified on the map (Cx. 11) as rock storage and building 200. Nixson testified that there are various pipelines that run from the plant onto the dock area where the ammonia and sulfuric acid are offloaded and pumped into the plant.

Additionally, Mobil offloads sulfuric acid from its east dock and pumps it directly to a third party company named Air Products, whose property is located adjacent to Mobil's but has no waterfront area or dock access. Mr. Nixson testified that Mobil receives payment for this import of sulfuric acid to Air Products, Inc. After Air Products uses the sulfuric acid as a drying agent in their processing, they return the altered sulfuric acid to the Employer for its use in its manufacturing process. (Pet. App. 15a). Therefore, Mobil's representation that the Mobil plant is not a transshipment place or intermodal for cargo is not entirely

correct, since it ships the ammonia acid directly to a third party (Air Products, Inc.) Also, as Mr. Nixson testified he can recall at least on one occasion where railcars were loaded at the facility and thereafter sent out to a third party docking area to be loaded on ships. (Tr., p. 107).

Mr. Nixson, on the date of his accident, was assigned to work on the locomotive crew moving railcars and keeping the units (presumably building 9 and building 10) supplied with railcars to load. His duties also included moving loaded railcars out onto other tracks (behind building 9 and building 10). Mr. Nixson identified the railcar and track area where he was injured as located behind buildings 9 and 10 and near the rock storage tanks to the east. (Tr., p. 109 and 111; Pet. App. 20a). The distance from the site of injury to the waterfront area is not reflected in the record. Mr. Nixson testified that he was attempting to couple cars together for purposes of pushing them back to the storage tracks when his accident occurred.

Respondent would note that Mr. Nixson's description of the area of his accident is slightly different than the arrowed portion of Cx. 11. Mobil's contention that the rail lines are separated from the waterfront areas of the Mobil premises is inaccurate. The map provided in the Petitioner's Brief (Cx. 11) and the aerial photograph provided by the Respondent (App. A) clearly depicts the Mobil premises and shows that the rail line enters the Employer's premises and drops down right onto the waterfront area, directly adjacent to the water and dock facilities. The other spur of the rail line cuts off and moves directly behind all of the rock storage and fertilizer storage areas, which are buildings that clearly are classified as marine storage facilities.

Lower Court Proceedings

Mr. Nixson filed a claim for benefits under the LHWCA. (Pet. App. 10a). Mobil defended his claim by challenging the status and situs qualifications of the Claimant stating that the injury did not occur on a covered situs. The Administrative Law Judge (ALJ) analyzed the situs issue by reviewing the decisions of the U.S. Court of Appeals Fifth Circuit on this issue. The ALJ noted factors which have been considered in determining whether a site is an adjoining area as including: the particular suitability of the site for maritime use as referred to in the statute; whether adjoining properties are devoted primarily to use in maritime commerce; proximity of the site to the water; and whether the site is as close to the water as is feasible given all the circumstances. *Arjona v. Intraport Maintenance Company, Inc.*, 31 B.R.B.S. 86 (1997); *Texports Stevedore Company v. Winchester*, 632 F.2d 504 (5th Cir. 1980), *cert denied*, 452 U.S. 905 (1981).

The ALJ specifically rejected Mobil's contention that the presence or absence of non-maritime buildings between the point of injury and the water was an absolute test for whether an injury is covered under the Act. The ALJ cited the Fifth Circuit's decision that the character of surrounding properties is only one factor to be considered in an analysis of "adjoining areas". *Winchester* at 513. The ALJ noted the Fifth Circuit also rejected the proposition that only the narrow strip of facilities physically touching the water can be a maritime situs. *Id.* at 514; *Alabama Dry Dock and Shipbuilding Company v. Kininess*, 554 F.2d 176 (5th Cir. 1977), *cert denied*, 434 U.S. 903 (1997). In *Kininess*, the Fifth Circuit found that the physical distance of the locus of injury (a back lot crane) to the water was not decisive in finding situs coverage. *Id.* at 178. The test applied was whether the situs was within a contiguous area which adjoins the water.

The ALJ also cited the Fifth Circuit's view of what constitutes the boundaries of an "area" as one defined by function. The area must be one "customarily used by the employer in loading, unloading, repairing or building a vessel". It was noted that the statute "does not require that the area's exclusive use be for maritime purposes so long as it is customarily used for significant maritime activity". *Winchester* at 515.

Therefore, the ALJ determined that the Employer's site on the Houston Ship Channel was suitable for its receipt of raw materials necessary for use in its manufacturing process, and shipment of its final product via maritime commerce to its customers; stating:

> The docks located along the waterway service Employer's maritime receipt of manufacturing materials and are certainly adjoining navigable waters. Such docks are also connected to storage and manufacturing areas by conveyer belt systems to facilitate receipt and shipment. Employer's facility is situated on the Houston Ship Channel and arguably could not have been located any closer to the waterway. The proximity of its location is a benefit to Employer given its maritime receipt and shipment activity. I find and conclude the Employer's facility is in the vicinity of navigable waters and used to load and unload vessels. Thus, the facility has a maritime nexus.

Pet. App. 27a.

The Benefits Review Board reviewed this case at the request of Mobil and determined that the issues raised herein by Mobil were the same situs and status issues raised by the Employer in *Gavranovic*. In *Gavranovic*, the Board rejected Mobil's various arguments and held that under the controlling law in the United States Court of Appeals for the Fifth Circuit, *Winchester*, 632 F.2d at 504, the Employer's entire facility constitutes a covered situs under the Act, especially, in light of its location adjacent to the ship channel, on a navigable waterway, and in light of the current significant maritime activity on the docks at Mobil's facility, loading and unloading barges and ships. Because the present case involved the same facility and the same employee classification and duties as the Board addressed in *Gavranovic*, the Board rejected the Employer's contentions and affirmed the ALJ's findings that the Employer's entire facility is a covered situs pursuant to § 903(a) of the Act. (Pet. App. 7a, 8a). The *Gavranovic* decision is attached as an appendix to the Petitioner's brief. (Pet. App. 37a-49a).

The Administrative Law Judge (ALJ) considered Mobil's arguments and allegations that the Fourth Circuit decisions require a more restrictive view of the facts than the controlling law established in the Fifth Circuit under the *Winchester* decision. The ALJ reviewed the Fourth Circuit cases cited by Mobil in its brief to the ALJ and determined that the *Sidwell* case held that a covered situs under the Act must actually adjoin navigable waters, i.e. it must be contiguous to and actually touch the navigable water. With regard to "other adjoining areas", the Court stated that non-enumerated areas must be similar to the enumerated ones and must be customarily used for maritime activity. Thus, the raison d'etre for the facility or structure must be for use in connection with navigable waters. *Sidwell v. Express*

Container Services, Inc., 71 F.3d 1134 (4th Cir. 1995), *cert denied*, 18 U.S. 1028 (1996). The ALJ also noted that following the *Sidwell* decision, the Fourth Circuit stated in *Jonathan Corp. v. Brickhouse*, 142 F.3d 217 (4th Cir. 1998), *cert denied*, 119 S. Ct. 590 (1998); that a steel plant located 1,000 feet from the river did not meet the geographical test and was not a facility, the purpose of which was to serve the navigable water. The ALJ stated that the reasoning of the Fourth Circuit in these cases would not dictate a contrary result in this case as the Employer's facility actually adjoins navigable waters and is used for loading and unloading vessels. (Pet. App. 45a n.7).

The Decision of the Fifth Circuit

The Fifth Circuit affirmed in a brief unpublished decision stating:

> We have carefully reviewed the stipulated facts regarding both the particular site where the accident occurred and the surrounding area constituting Mobil's facility contiguous to the ship channel in light of the applicable law as set forth in the briefs of counsel to this Court and discussed in oral argument before us. Particularly in light of our standard of review of this case and the seminal case in this Court, *Texports Stevedore Company v. Winchester*, 632 F.2d 504 (5th Cir. 1980, *en banc*); we are convinced that "the area" as distinguished from the pinpoint site of the accident, is a covered situs pursuant to the plain wording of Section 903(a) of the LHWCA.

As Nixson's status was stipulated, his claim is clearly within the coverage of the LHWCA. The decisions of the ALJ and the BRB were therefore affirmed.

REASONS FOR DENYING THE WRIT

The Petitioner, Mobil, is attempting to develop a conflict of opinions between the Circuit courts involving the issue of situs under the LHWCA, by asking the courts to look at the "pinpoint" site of a Claimant's injury as opposed to the "area" involved in a Claimant's injury, as plainly directed by the Act. The clear intent of Congress in the 1972 amendments to the LHWCA was to extend coverage landward to traditional maritime workers to alleviate the inequities of the Act and eliminate the problem of workers walking in and out of coverage during the workday. This congressional intent was clearly affirmed by this Honorable Court in its decision in *Northeast Marine Terminal Company v. Caputo*, 432 U.S. 249 (1997). A review of the cases from both the Fourth and Fifth Circuit Court of Appeals indicates that each court has issued decisions based upon the facts of each specific case, as it relates to the guidelines put forth by the Congress and this Honorable Court under the *Caputo* decision. There is no conflict among the jurisdictions that needs to be addressed by this Honorable Court.

I. THE FIFTH CIRCUIT'S DECISION DOES NOT PERPETUATE A CIRCUIT CONFLICT OVER THE MEANING OF THE PHRASE "CUSTOMARILY USED" IN THE LHWCA.

A. The initial flaw in Petitioner's appeal is that they view themselves as a "manufacturing" facility that is not "specifically" enumerated under the express language of the Act. They object to the Fifth Circuit ruling that their premises, which include five (5) specifically designed loading and unloading areas, is a maritime situs as defined under § 903(a) of the Act; which reads:

> Except as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel.

The Employer seeks to have this Court review this decision and direct the Fifth Circuit to go back and construct a line through the Employer's premises that will mark a line of jurisdiction which traditional maritime workers under the status test can cross and will no longer be covered under the LHWCA. Respondent objects, this request will violate the law and Congress' intent under the 1972 Amendments, to alleviate a line of demarcation for jurisdiction and allow maritime workers to walk in and out of coverage while performing their normal work duties. Since Mobil's property is contiguous to the waterfront areas, the ALJ, BRB and Fifth Circuit were correct in using its property lines to establish situs.

Petitioner is correct in stating that this is an important issue, but this Court and Congress give all parties clear insight in how to analyze the facts and make a determination. The Administrative Law Judge decision, approved by the Fifth Circuit, is well reasoned under the law and based upon the specific facts of this case. The Petitioner admitted to the Respondent's status, admitted it was a maritime employer (Tr., p. 98), and admits that they have maritime docking facilities which are an intrical part of their premises; used to

unload necessary raw materials (phosphate rock, ammonia, acid), and to load their finished fertilizer product into barges and ships. The Employer has argued that they should be allowed to carve up their premises into maritime areas and state jurisdiction areas. The ALJ and Fifth Circuit ruled that to request the Courts to look at a "pinpoint" site within a contiguous area to determine the question of situs is not what is dictated by the plain language of the Act, nor the decisions of this Court.

The Petitioner wants the Court to begin its review of their situs by starting with the premise that they are a manufacturing plant, which is subject to state jurisdiction, except for select areas of admitted maritime activities. The fallacy of this analysis is that it leads to the creation of a maze of jurisdictional uncertainty as workers walk in and out of coverage each day. Under this analysis the docks, warehouses and pipelines leading to the barges are a covered situs, but the land and rail lines between these areas is not; nor is the land above and around the pipelines used to unload product to storage tanks. As a result, Respondent would be covered as crane operator in Building 9, not covered as he crosses the rails and is covered again once he reaches the dock. Respondent would be covered as a buhler operator unloading phosphate rock, but not if needed to go to the office to check on documents associated with the unloading he is doing; as a maritime (ILA) clerk or worker would do in loading the same vessel.

The Fifth Circuit decision is based clearly on the statutory language of the Act and the rule of law documented by this Court.

B. The Circuits are not split on the issue whether, when part of a manufacturing facility is used for loading or unloading vessels, the entire facility is "customarily used" for such purposes.

When reviewing the issue of situs, each of the Circuits first look to see if any maritime activity is being conducted on the property which adjoins navigable waters; if so, is it customarily used for maritime purposes. The facts of each case are analyzed under the guidelines of the statute but each of the Circuits use different words or phrases to explain their decisions. This does not create a legal conflict. The Petitioner contends that solely because Jonathan Corp. classified itself as a "plant", the Fourth Circuit found that the "raison d'etre" of the properties use did not include a connection to navigable waters enough to qualify as a maritime situs. However, Jonathan Corp.'s status as a plant was not the controlling factor, their rare involvement in maritime commerce determined the issue.

The facts in *Brickhouse* relate that Mr. Brickhouse was a welder for Tidewater Steel (Jonathan Corp.), sometimes welding on components for installation on vessels, but mostly working on maintenance projects. The property was located on the Elizabeth River and had a dock for loading barges. However, Tidewater Steel received *all* of its steel by rail or truck and likewise shipped out most of its fabricated product by rail or truck. From "time to time" large components would be shipped by barge. Only one example was evidenced in the record, the company shipped components of a flight deck by barge to a Navy shipyard. *Brickhouse* at 219. It was also noted that Tidewater Steel did not even have a shoreside crane that could be used for the purpose of conducting loading or unloading. *Id.* at 220.

In ruling that Tidewater's property was not a maritime situs, the Fourth Circuit noted: (1) that while working at Tidewater's plant the employee's work did not routinely take them from within the plant, onto the adjoining water, and back again to the plant; (2) while fabricating, employee's work kept them inside the plant; (3) all steel (raw material) is shipped in by truck or rail; (4) all components (finished product) were shipped out of the plant for installation off Tidewater property; (5) Brickhouse would travel by land to shipyards to install fabricated parts; and (6) Tidewater's location adjacent to the water was "fortuitous" in that it did not load or unload materials or parts as a "customary" course of business. *Brickhouse* at 222. Therefore, it properly denied coverage stating, "The steel fabrication plant where Brickhouse was injured was not a facility, the "raison d'etre" of which is their use in connection "with the nearby navigable waters". *Id.* at 222; *Sidwell* at 1139.

Had Tidewater's facility had the connection to the navigable waters that the evidence in this case attributes to Mobil's premises, the Fourth Circuit would have granted situs jurisdiction. Using the same factual analysis from Brickhouse to the Mobil facts reveals: (1) Nixson and other workers routinely moved from the rail lines and other areas of the plant to the waterfront docks to load and unload barges and vessels (Tr., p. 115); (2) while performing non-maritime work (loading railcars) workers travel right down to the docks and marine warehouses and can be called upon to leave their job and assist in maritime unloading (Tr., p. 90); (3) *all* phosphate rock and a significant amount of ammonia and acid (raw materials) are unloaded by barge (Tr., p. 33, 34, 36); (4) the finished product (fertilizer — MAP, DAP, Thio) is shipped out in significant tonnage by barge and vessel directly from Mobil's working docks; (5) Nixson never

had to leave the property to perform his maritime work; and (6) Mobil's location on the water was not "fortuitous", Nixson testified that without the raw material received by barge the plant could not operate, and its export tonnage would greatly decrease without the shipments by barge and vessel. (Tr., p. 36). Also, unlike Tidewater, Mobil had five (5) separate, functional marine unloading/loading docks that were used in the "customary" operation of the plant. Therefore, the "raison d'etre" of Mobil's plant (producing/ exporting fertilizer) is directly connected to its location on the Houston Ship Channel.

II. THE FIFTH CIRCUIT'S HOLDING COMPORTS WITH CONGRESSIONAL INTENT AND ESTABLISHED CASE LAW

It is agreed that Congress' intent in enacting the 1972 Amendments was to alleviate the problem of longshoremen moving in and out of coverage at the water's edge and to provide uniform coverage. The previous test was a pure situs test, but now with expanded coverage landward, the test for coverage includes both situs and status. This Court in *Caputo* (p. 272) recognized Congress wanted "a uniform" compensation system to apply to employees who would otherwise be covered by the Act for part of their activity. S. Rep. 13; H.R. Rep. 10. It wanted a system that did not depend on the "fortuitous" circumstances of whether the injury [to the longshoreman] occurred on land or over water. S. Rep. 13; H.R. Rep. 10.

This Court further notes "it is not at all clear that the phrase 'customarily used' was intended to modify more than the immediately preceding phrase 'other areas' (*Caputo* at 28); in contradiction to the interpretation advocated by the Petitioner."

The Fifth Circuit in its seminal case, *Winchester*, adopts this Court's interpretation when addressing the issue of where the boundaries to an "area" are under the statute. It is an "area" if it is customarily, not exclusively, used for significant maritime activity. *Winchester* at 515. There is nothing in Congress' comments, the statutory language, nor this Court's decisions that suggest that the term "other adjoining area" was meant to require a "pinpoint" review of the exact site of the injury, as opposed to the Employer's contiguous property line.

The Fourth Circuit in *Sidwell* (p. 1140) states specifically, "although one might be tempted to initially eschew any reliance on conventional property lines in defining 'other adjoining area' we believe that it is inescapable that some notion of property lines will be at least relevant, if not dispositive, in determining whether the injury occurred within a single 'other adjoining area' ".

In fact, by footnote the Fourth Circuit adapts the language of the Fifth Circuit in *Alabama Dry Dock & Shipbuilding Co. v. Kininess*, 554 F.2d 176, 178 (5th Cir.), *cert denied*, 434 U.S. 903 (1977), stating: "In this regard, of course, it is the parcel of land that must adjoin navigable waters, not the particular square foot on that parcel upon which the Claimant was injured." *Sidwell* at 1140.

Therefore, it is quite clear that Congress and both Circuits intended that the term "other adjoining areas" be viewed as a contiguous parcel of property, customarily used by an Employer for maritime purposes; such as the unloading of raw material and the loading of finished product. There is not an inconsistent decision on the issue between the Circuits, nor does the Fifth Circuits' holding in Nixson depart for

Congress' intent in amending the Act in 1972. The ALJ, BRB and Fifth Circuit each held that the loading and unloading being performed at the five dock areas of Mobil's premises was part of their customary function, and the boundary of Mobil's "area" of operations, which adjoined the Houston Ship Channel, consisted of this contiguous parcel of property.

III. THERE IS NOT AN IMPORTANT FEDERAL QUESTION INVOLVING THE TERM "CUSTOMARILY USED" TO BE ADDRESSED BY THE COURT

There is no "vacuum", as alleged by the Petitioner, involving the situs issue created by this Court's prior decisions. The status issues addressed by the Court give us a foundation to review all jurisdictional questions involving the Act. A review of the Courts' status cases (*Schwalb, Herbs' Welding, Perini, P.C. Pfeiffer, Co.,* and *Caputo*) all illustrate that an employee need not be continuously or exclusively engaged in maritime activities to gain status under the 1972 Amendments, as long as they spent at least some of their time in indisputable longshoring activities, and contributed to the process, even if not continuously. The status requirement illustrates that neither Congress, nor this Court intend to draw restrictive, irrational lines to demark maritime jurisdiction. To do so would once again create anomalies in this system that once drew an arbitrary line at the water's edge. These cases illustrate this Court's recognition of Congress' intent not to make the jurisdictional requirements of the Act punishingly restrictive but recognized the inherent mix of activity and structures that would be involved in its landward movement. Congress did not expect that a covered situs would include only maritime structures and activity.

Congress did not intend for the courts to disregard from coverage workers who unload barges at a dock located on the land of a manufacturing company just because the parcel of property included manufacturing buildings. The ten-year comparison charts (App. B) illustrate the volume of maritime activity being conducted on this property.

Following this Court's reasoning on the status issues, it is clear Congress did not intend to require a situs be exclusively and continuously engaged in maritime activities to be qualified as a maritime situs, under the term "other adjoining area". The Circuit Courts agree that the property lines for the contiguous parcel of land, which adjoins the water, and is "customarily" used for loading and unloading, is a reasonable boundary to follow in determining a covered situs. The Fifth Circuit's decision is correct and needs no further review.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A — AERIAL PHOTO OF MOBIL MINING & MINERALS PREMISES

APPENDIX B — TRAFFIC MONTHLY REPORT AND TEN YEAR COMPARISON OF RECEIPTS/SHIPMENTS

(Omitted here but submitted separately as Lodging Appendix)